

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, et al.,)	Civil Action No. 3:17-cv-00072
Plaintiffs,)	
)	
v.)	<u>ORDER</u>
)	
JASON KESSLER, et al.,)	
Defendants.)	By: Joel C. Hoppe
)	United States Magistrate Judge

This matter is before the Court on Plaintiffs' nondispositive "Motion to De-Designate Certain Documents Designated as Confidential or Highly Confidential," ECF No. 1215, and accompanying motion to seal the subject materials, ECF No. 1216. *See* Pretrial Order ¶ 12 ("Nondispositive motions, . . . whether or not opposed, may be acted upon at any time by the court, without awaiting a response, and any party adversely affected by such action may request reconsideration, vacation or modification."), ECF No. 101. The subject materials are documents and audio or visual recordings that Plaintiffs intend to introduce as exhibits at the upcoming jury trial, but that certain Defendants designated as "Confidential" or "Highly Confidential" when they produced those materials in discovery. *See* Pls.' Mot. App'x A, at 2–8 (Defendants Ray, Schoep/National Socialist Movement, Vanguard America, and Cantwell), ECF No. 1215-1. Under the Protective Order, ECF No. 167, a "Producing Party may designate as Confidential any information that the Producing Party, in good faith, believes should be protected from public disclosure," and may designate as "Highly Confidential any . . . personal information," such as home addresses, telephone numbers, non-party surnames, or banking information "of any person, that the Producing Party, in good faith, believes should be protected from disclosure to those not permitted to receive Highly Confidential Information," *id.* ¶ 3(a)–(b).

As relevant here, the Protective Order prohibits Plaintiffs from furnishing, showing, or disclosing any “Confidential” or “Highly Confidential” information to the jurors and members of the public without a court order authorizing such disclosure. *See id.* ¶¶ 4–5, 19. Having reviewed the documents and recordings listed in Appendix A to Plaintiffs’ motion, ECF No. 1215-1, the Court finds that these materials, even if properly designated as “Confidential” or “Highly Confidential” by the producing Defendant during pretrial discovery, need not be protected from public disclosure during the conduct of this trial. *Cf.* W.D. Va. Gen. R. 9 (“Case law protects generally the right of public access to documents filed in court, both under the First Amendment and the common law.”) (citing *Va. Dept of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004)). Accordingly, Plaintiffs’ motion to de-designate the subject materials, ECF No. 1215, is **GRANTED**. The accompanying motion to seal, ECF No. 1216, is **DENIED** as moot.

IT IS SO ORDERED.

ENTER: October 22, 2021



Joel C. Hoppe
U.S. Magistrate Judge